2023 SCC OnLine SC 1451

In the Supreme Court of India

(BEFORE VIKRAM NATH AND RAJESH BINDAL, JJ.)

Aditi Alias Mithi ... Appellant(s);

Versus

Jitesh Sharma ... Respondent(s).

Criminal Appeal No(s). 3446 of 2023 (Arising out of S.L.P.(Crl.) No. 11954 of 2023)

Decided on November 6, 2023

Advocates who appeared in this case:

For Petitioner(s) Ms. Pragati Neekhra, AOR

Mr. Aditya Bhanu Neekhra, Adv.

Mr. Aniket Patil, Adv.

For Respondent(s)

The Judgment of the Court was delivered by

RAJESH BINDAL, J.:— Leave granted.

2. As per the office report dated 30.10.2023, the respondent had refused to receive notice, hence, the service is deemed to be complete.

3. The appellant-minor daughter of the respondent-father is aggrieved of the order[1] passed by the High Court[2] by which the order[3] passed by the Family Court[4] was modified. The Family Court had fixed maintenance for the appellant Rs. 20,000/- per month, which was reduced to Rs. 7,500/- per month by the High Court.

4. Learned counsel for the appellant submitted that the marriage between the mother of the appellant and the respondent was solemnized in the year 2008. Out of the wedlock a boy and a girl were born. The custody of the boy is with the respondent whereas the appellant is living with the mother. A divorce petition was filed by the respondent-husband in January 2018 before the Family Court. In May 2018 the appellant and her mother-Shikha Sharma filed an application under Section 125 Cr. P.C. before the Family Court. The divorce petition filed by the respondent-husband was allowed by the Family Court on 10.09.2022. Vide order dated 30.11.2022, the Family Court partly allowed the application filed by the appellant and her mother under Section 125 Cr. P.C. and awarded maintenance of Rs. 20,000/- per month for the appellant-minor daughter. The wife was denied any maintenance. The order qua that became final.

5. The High Court vide impugned cryptic order has reduced the amount of maintenance from Rs. 20,000/- to Rs. 7,500/-. Despite

service the respondent has not chosen to appear before this Court. He is shirking to take care of the appellant (minor daughter) who is 6-7 years of age at present. Prayer is that the impugned order passed by the High Court be set aside and that the order of the Family Court be restored.

6. We have heard learned counsel for the appellant and perused the paper book.

7. From a perusal of the order passed by the Family Court awarding maintenance of Rs. 20,000/- per month to the appellant (minor daughter), it is evident that the court had considered the material placed before it. However, the High Court in revision, filed against the aforesaid order by the respondent, recorded that earlier the respondent was doing private work and at present he is financially distressed.

8. The manner in which maintenance payable under Section 24 of the Hindu Mariage Act, 1955 or Section 125 Cr. P.C. is to be assessed, was considered by this Court in its celebrated judgment in *Rajnesh* v. *Neha*, (2021) 2 SCC 324. Detailed guidelines were issued. It was noticed that the terms of maintenance are decided on the basis of pleadings of parties and on the basis of some amount of guess work. It is often seen that both the parties submit scanty material and do not disclose correct details. The tendency of the wife is to exaggerate her needs, whereas the husband tends to conceal his actual income. Keeping that in view, this Court laid down the procedure to streamline grant of maintenance. The judgments of various courts were referred to and response from various State Legal Services Authorities was sought. This Court even requested the National Legal Services Authority to submit a report on the suggestions received from the State Legal Services Authorities for framing guidelines on the affidavit of disclosure of assets and liabilities to be filed by the parties. Guidelines were issued in exercise of powers under Article 136 read with Article 142 of the Constitution of India, prescribing a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings. The judgment was delivered on 04.11.2020. The affidavit was to be submitted in all maintenance proceedings including pending proceedings. The directions given are extracted as under:

> "72. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:
>
> > 72.1. (*a*) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family

Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

72.2. (*b*) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (*c*) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings [*Kaushalya* v. *Mukesh Jain*, (2020) 17 SCC 822]. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (*d*) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

72.5. (*e*) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

72.6. (*f*) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. (*g*) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

72.8. (*h*) The pleadings made in the applications for

maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

72.9. (*i*) In case the parties belong to the economically weaker sections ("EWS"), or are living below the poverty line ("BPL"), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (*j*) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

72.11. (*k*) A professional Marriage Counsellor must be made available in every Family Court."

9. Criteria was also laid down for determining the quantum of maintenance. Guidelines were laid down regarding maintenance to minor children in paras 91 and 92 thereof, which are extracted below:

"*Permanent alimony*

91. The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed.

92. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties."

10. The Formats of Affidavits required to be filed for Disclosure of Assets and Liabilities for non-agrarian deponents, agrarian deponents and the parties residing in the State of Meghalaya in terms of Enclosure -I to Enclosure-III to the aforesaid judgment, which are extracted below:

"ENCLOSURE I

Affidavit of Assets and Liabilities for Non-Agrarian Deponents

I _________, d/o _______ or s/o______, aged about ______years, resident of______, do hereby solemnly affirm and declare as under:

A. Personal Information

1. Name:

2. Age/Sex:

3. Qualifications (Educational and Professional):

4. Whether the Applicant is staying in the matrimonial house/parental home/separate residence. Please provide the current residential address of matrimonial home or place of residence and details of ownership of residence, if owned by other family member.

5. Date of marriage:

6. Date of separation:

7. General monthly expenses of the Applicant (rent, household expenses, medical bills, transportation, etc.):

B. Details of Legal Proceedings and Maintenance being paid

1. Particulars of any ongoing or past legal proceedings with respect to maintenance or child support between the Applicant and Non-Applicant.

2. Whether any maintenance has been awarded in any proceeding arising under the DV Act, CrPC, HMA, HAMA, etc.? If yes, provide details of the quantum of maintenance awarded in the proceedings.

3. If so, provide particulars thereof, along with a copy of the order(s) passed.

4. Whether the order of maintenance passed in earlier proceedings has been complied with. If not, arrears of maintenance.

5. Whether any voluntary contribution towards maintenance has been made/will be made in the future? If yes, provide details of the same.

C. Details of dependent family members

1. Details of dependent family members, if any.

(*a*) Relationship with dependants:

(*b*) Age and sex of dependant(s):

2. Disclose if any independent source(s) of income of the dependants, including interest income, assets, pension, tax liability on any such income and any other relevant details.

3. The approximate expenses incurred on account of the dependant.

D. Medical details if any, of the deponent and/or dependent family members

1. Whether either party or child/children is suffering from any physical/mental disability, or any other serious ailment. If yes, produce medical records.

2. Whether any dependent family member has serious disability, requiring continuous medical expenditure. If yes,

produce disability certificate and approximate medical expenditure incurred on such medical treatment.

3. Whether either party or child/children or any other dependent family member is suffering from life-threatening diseases, which would entail expensive and regular medical expenditure? If yes, provide details of the same along with summary of previous details of hospitalisation/medical expenses incurred.

E. Details of children of the parties

1. Number of children from the existing marriage/marital relationship/previous marriage.
2. Name and age of children.
3. Details of the parent who has the custody of the children.
4. Expenditure for maintenance of dependent children.

(*a*) Towards food, clothing and medical expenses.

(*b*) Towards expenses for education, and a summary of general expenses.

(*c*) Towards expenses, if any, of any extra educational, vocational or professional/educational course, specialised training or special skills programme of dependent children.

(*d*) Details of any loan, mortgage, charge incurred or instalment plan (being paid or payable), if any, on account of any educational expenses of children.

5. Whether any voluntary contribution by either of the parties is being made towards these educational expenses? If yes, provide details of the same. Also provide an estimate of any additional contribution that may be required.
6. Whether any financial support is being provided by a third party for the educational expenses of the children?

F. Details of Income of the Deponent

1. Name of employer:
2. Designation:
3. Monthly income:
4. If engaged in government service, furnish latest salary certificates or current pay slips or proof of deposit in bank account, if being remitted directly by employer.
5. If engaged in the private sector, furnish a certificate provided by the employer stating the designation and gross monthly income of such person, and Form 16 for the relevant period of current employment.
6. If any perquisites, benefits, house rent allowance, travel allowance, dearness allowance or any other service benefit is

being provided by the employer during the course of current employment.

7. Whether assessed to income tax?

If yes, submit copies of the Income Tax Returns for the periods given below:

(*i*) One year prior to marriage

(*ii*) One year prior to separation

(*iii*) At the time when the application for maintenance is filed

8. Income from other sources, such as rent, interest, shares, dividends, capital gains, FDRs, Post office deposits, mutual funds, stocks, debentures, agriculture, or business, if any, along with TDS in respect of any such income.

9. Furnish copies of bank statement of all accounts for the last 3 years.

G. Assets (movable and immovable) owned by the Deponent

1. Self-acquired property, if any:

2. Properties jointly owned by the parties after marriage:

3. Share in any ancestral property:

4. Other joint properties of the parties (accounts/investments/FDR/mutual funds, stocks, debentures, etc.), their value and status of possession:

5. Status of possession of immovable property and details of rent, if leased:

6. Details of loans taken or given by the Deponent:

7. Brief description of jewellery and ornaments of parties acquired during/after marriage:

8. Details of transfer deeds or transactions of alienation of properties previously owned by the applicant, executed during the subsistence of the marriage. Also provide brief reasons for such sale or transaction, if any.

H. Details of Liabilities of the Deponent

1. Loans, liabilities, mortgage, or charge outstanding against the Deponent, if any.

2. Details of any EMIs being paid.

3. Date and purpose of taking loan or incurring any such liability:

4. Actual amount borrowed, if any, and the amount paid up to date of filing the Affidavit:

5. Any other information which would be relevant to describe current liabilities of the Deponent.

I. Self-employed persons/Professionals/Business

Persons/Entrepreneur

1. Brief description of nature of business/profession/vocation/self-employed/work activity.
2. Whether the business/profession/self-employment is carried on as an individual, sole proprietorship concern, partnership concern, LLP, company or association of persons, HUF, joint family business or any other form? Give particulars of Applicant's share in the partnership/business/professional association/self-employment. In case of partnership, specify the share in the profit/losses of the partnership.
3. Net Income from the business/profession/partnership/self-employment.
4. Business/partnership/self-employment liabilities, if any, in case of such activity.
5. In case of business of company, provide brief details of last audited balance sheet to indicate profit and loss of the company in which such party is in business in the company.
6. In case of a partnership firm, provide details of the filings of the last Income Tax Return of partnership.
7. In case of self-employed individual, provide the filings of the last Income Tax Return from any such professional/business/vocational activity.

J. Information provided by the Deponent with respect to the income, assets and liabilities of the other Spouse

1. Educational and professional qualifications of the other spouse:
2. Whether spouse is earning? If so, give particulars of the occupation and income of the spouse.
3. If not, whether he/she is staying in his/her own accommodation, or in a rented accommodation or in accommodation provided by employer/business/partnership?
4. Particulars of assets and liabilities of spouse as known to the deponent, along with any supporting documents.

K. Details of Applicant or the other Spouse, in case parties are Non-Resident Indians, Overseas Citizens of India, Foreign Nationals or Persons living abroad outside India

1. Details of Citizenship, Nationality and current place of residence, if the Applicant or other spouse is residing abroad outside India, temporarily or permanently.
2. Details of current employment and latest income in foreign currency of such applicant/spouse, duly supported by relevant documentation of employment and income from such foreign employer or overseas institution by way of

employment letter or testimonial from foreign employer or overseas institution or latest relevant bank statement.

3. Details of household and other expenditure of such applicant/spouse in foreign jurisdiction.
4. Details of tax liability of applicant/other spouse in foreign jurisdiction.
5. Details of income of applicant/other spouse from other sources in India/foreign jurisdiction.
6. Details of expenses incurred or contribution made on account of spousal maintenance, child support or any other educational expenses, medical treatment of spouse or children.
7. Any other relevant detail of expenses or liabilities, not covered under any of the above headings and any other liabilities to any other dependent family members in India or abroad.

Declaration

1. I declare that I have made a full and accurate disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than as stated in this affidavit.
2. I undertake to inform this Court immediately with respect to any material change in my employment, assets, income, expenses or any other information included in this affidavit.
3. I understand that any false statement in this affidavit, apart from being contempt of court, may also constitute an offence under Section 199 read with Sections 191 and 193 of the Penal Code, 1860 punishable with imprisonment up to seven years and fine, and Section 209 of the Penal Code, 1860 punishable with imprisonment up to two years and fine. I have read and understood Sections 191, 193, 199 and 209 of the Penal Code, 1860.

DEPONENT

Verification

Verified at ___on this _____day of _____ that the contents of the above affidavit are true to my personal knowledge, no part of it is false and nothing material has been concealed therefrom, whereas the contents of the above affidavit relating to the assets, income and expenditure of my spouse are based on information believed to be true on the basis of record. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals.

DEPONENT

ENCLOSURE II

Details for Affidavit for Agrarian Deponents (Krishi)

1. Total extent of the rural land(s) owned, or the specific shareholding in the same land:
2. Jamabandis/Mutations to show ownership.
3. Location of the land owned by the party.
4. Nature of land : whether wet land or dry land.
5. Whether such land is agricultural land or non-agricultural land:
6. Nature of agriculture/horticulture:
7. Nature of crops cultivated during the year:
8. If rural land is not cultivable, whether the same is being used for business, leasing or other activity:
9. Income generated during the past 3 years from the land.
10. Whether any land is taken on lease/battai (or any other term used for a lease in the local area of the jurisdiction concerned where rural/agricultural land is located.)
11. (*a*) Whether owner of any livestock, such as buffaloes, cows, goats, cattle, poultry, fishery, bee keeping, piggery, etc. the number thereof and income generated therefrom?

(*b*) Whether engaged in dairy farming, poultry, fish farming or any other livestock activity.

12. Loans, if any obtained against the land. Furnish details of such loans.
13. Any other sources of income:
14. Liabilities, if any.
15. Any other relevant information:

Declaration

1. I declare that I have made a full and accurate disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than as stated in this affidavit.
2. I undertake to inform this Court immediately with respect to any material change in my employment, assets, income, expenses or any other information included in this affidavit.
3. I understand that any false statement in this affidavit, apart from being contempt of court, may constitute an offence under Section 199 read with Sections 191 and 193 of the Penal Code, 1860 punishable with imprisonment up to seven years and fine, and Section 209 of the Penal Code, 1860 punishable with imprisonment up to two years and fine. I have read and understood Sections 191, 193, 199 and 209 of the Penal Code, 1860.

DEPONENT

Verification

Verified at ___on this ___day of_____that the contents of the above affidavit are true to my personal knowledge, no part of it is false and nothing material has been concealed therefrom. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals.

DEPONENT

ENCLOSURE III

Affidavit for the State of Meghalaya

1. Whether the woman is the youngest daughter of the family.
2. Whether the woman is staying with her husband in her family property.
3. Whether she has any maternal uncle, who plays a very important role in their family matters, which includes settlement of matrimonial disputes. The woman should also disclose her clan and her lineage.
4. The woman should disclose if her children have adopted the surname of her mother, inasmuch as Khasi has been defined as "a person who adopts the surname of his or her mother".
5. The woman should disclose if she gets any financial assistance from her clan or family member.
6. The woman should disclose if her parents are alive more specifically, her mother, and how many siblings she has.
7. In event of a woman not being the youngest daughter, she has to disclose who the youngest daughter is.
8. The woman should disclose if she has any movable or any immovable property, self-acquired or inherited from her clan.
9. The woman should disclose if she is married to tribal or non-tribal.

The above format may be modified or adapted by the court concerned, as may be considered appropriate.

Declaration

1. I declare that I have made a full and accurate disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than as stated in this affidavit.
2. I undertake to inform this Court immediately with respect to any material change in my employment, assets, income, expenses or any other information included in this affidavit.
3. I understand that any false statement in this affidavit, apart from being contempt of court, may also constitute an offence under Section 199 read with Sections 191 and 193 of the Penal Code,

1860 punishable with imprisonment up to seven years and fine, and Section 209 of the Penal Code, 1860 punishable with imprisonment up to two years and fine. I have read and understood Sections 191, 193, 199, and 209 of the Penal Code, 1860.

DEPONENT

Verification

Verified at ___on this _____day of _____ that the contents of the above affidavit are true to my personal knowledge, no part of it is false and nothing material has been concealed therefrom, whereas the contents of the above affidavit relating to the assets, income and expenditure of my spouse are based on information believed to be true on the basis of record. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals.

DEPONENT"

11. Separate Affidavits were provided for agrarian and non-agrarian deponents as the particulars to be furnished by the deponents living in the urban areas are entirely different from those who are living in rural and tribal areas. Separate format of Affidavit has been provided for the residents of the State of Meghalaya considering its special status. It is predominantly a tribal area and follows matrilineal system of society.

12. In *Neha Tyagi* v. *Lieutenant Colonel Deepak Tyagi*, (2022) 3 SCC 86, this court while upholding the decree of divorce granted by the courts below, opined that even after the divorce, the husband is not absolved of his liability and responsibility to maintain child/son till he attains the age of majority. In a dispute between the husband and wife, the child should not be made to suffer. Relevant para 6 thereof is extracted below:

"6. However, at the same time, the respondent husband cannot be absolved from his liability and responsibility to maintain his son Pranav till he attains the age of majority. Whatever be the dispute between the husband and the wife, a child should not be made to suffer. The liability and responsibility of the father to maintain the child continues till the child/son attains the age of majority. It also cannot be disputed that the son Pranav has a right to be maintained as per the status of his father. It is reported that the mother is not earning anything. She is residing at her parental house at Jaipur. Therefore, a reasonable/sufficient amount is required for the maintenance of her son including his education etc. which shall have to be paid by the respondent husband, irrespective of the decree of dissolution of marriage between the appellant wife and the respondent husband. The amount which was being paid pursuant to the order passed by the Army authorities on 15-11-2012 has also

been stopped by the respondent husband since December 2019."

(emphasis supplied)

13. However, in a given case, where the earning of the wife is also good, that factor can always be considered as joint parenting is always best for upbringing of the child. The basic object is the welfare of the child.

14. A perusal of the order passed by the High Court shows that the amount of maintenance awarded to the appellant was reduced from Rs. 20,000/- to Rs. 7,500/- per month, merely noticing that earlier, the respondent was in business. However, at that point in time he was in debt and in financial distress, hence, not able to pay huge amount of maintenance to the minor daughter. The respondent is not represented before this Court to justify the stand taken by him before the High Court. The Family Court had passed a detailed order giving reasons.

15. Nothing is evident from the record or even pointed out by the learned counsel for the appellant at the time of hearing that affidavits were filed by both the parties in terms of judgment of this Court in *Rajnesh's case* (supra), which was directed to be communicated to all the High Courts for further circulation to all the Judicial Officers for awareness and implementation. The case in hand is not in isolation. Even after pronouncement of the aforesaid judgment, this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without their being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance. Comprehensive guidelines were issued pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of maintenance are available under the Special Marriage Act, 1954, Section 125 Cr. P.C., the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act, 1956, and Criteria for determining quantum of maintenance, date from which maintenance is to be awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. As a result, the litigation which should close at the trial level is taken up to this Court and the parties are forced to litigate.

16. As in the case in hand, the impugned order passed by the High Court is cryptic and is bereft of reasons. In our opinion, the same deserves to be set aside and the matter is liable to be remitted to the High Court for consideration afresh. Ordered accordingly. As the respondent remained unrepresented, the High Court may issue notice for his appearance on the date so fixed by it.

17. Considering the facts of the case in hand and the other similar cases coming across before this Court not adhering to the guidelines given in *Rajnesh's case* (supra), we deem it appropriate to direct the Secretary General of this Court to re-circulate the aforesaid judgment not only to all the Judicial Officers through the High Courts concerned but also to the National Judicial Academy and the State Judicial Academies, to be taken note of during the training programmes as well. Ordered accordingly.

18. The appeal is disposed of accordingly.

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[1] Dated 28.06.2023 in Criminal Revision No. 4939 of 2022

[2] High Court of Madhya Pradesh at Gwalior

[3] Dated 30.11.2022

[4] Family Court, Guna